IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8725 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NAVALRAM AGRO MACHINERY PVT LTD - Petitioner(s)

Versus

VAJAJI CHANAJI - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner No(s).: 1.

MR. VD MEWADA for Respondent No(s).: 1.
MR.NIRANJAN P BAROT for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 30/06/2005

ORAL JUDGMENT

1. The petitioner herein has challenged the award dated 6.11.1999 passed by the Labour Court, Ahmedabad in Reference (LCA) No.544/84 granting reinstatement with full backwages tot he respondent.

2. The short facts as stated in the petition are as under:

2.1 According to the petitioner for want of work 39 workmen came to be retrenched by the petitioner. On 1.2.1982 the petitioner issued an order of termination by way of retrenchment terminating the services of the respondent with effect from 2.2.1982. The respondent was advised to to collect his dues, such as retrenchment, notice pay, etc. from the office of the petitioner. According to the petitioner, the petitioner had passed an order of retrenchment for a further lot of 137 workmen with effect from 30.3.82 for want of work. In view of this Reference No.622/82 was filed before the Labour Court, Ahmedabad.

2.2 On 18.8.1982 the respondent filed a complaint before a ACL/GLO, Ahmedabad alleging that his services were terminated on 20.6.1982. The petitioner submitted reply to ACL stating therein that reference is already made to the Labour Court concerning the retrenchment of the respondent and there is no question of a second reference. The petitioner further stated that it was willing to take the respondent on duty even subject to his claim as regards backwages. Therefore the Conciliation case was closed by the authority on 24.1.1983.

2.3 According to the petitioner a settlement was arrived at between the petitioner and the Union representing the retrenched workmen in the aforesaid Reference No.622/82. The Labour Court made award in terms of settlement in the aforesaid Reference No.622/82. Thereafter the respondent approached GLO/ACL for reopening the conciliation case. On 18.1.1984 the GLO issued notice asking the petitioner to remain present for discussions on 5.12.1983. The petitioner submitted their reply stating that reference No.622/82 was disposed of in terms of settlement and that no industrial dispute survive. Thereafter reference came to be made to the Labour Court for reinstatement in service with full backwages. The respondent workman gave oral evidence before the Labour Court. After the evidence of the respondent was recorded, the respondent gave application Exh.19 for amendment of written statement alleging therein that pursuant to the award in terms of settlement dated 6.5.1983, he used to report for duty everyday in the morning and evening, but was not taken on duty. The Labour Court allowed the amendment as prayed for in application Exh.19 on 21.1.1992. Thereafter in the year 1996 on 30.8.1996 the respondent gave an application Exh.30 seeking permission to give additional oral evidence.

2.4 The Labour Court allowed the application Exh.30 permitting the respondent to give additional evidence with regard to documents produced by him along with list at Exh.31. Ultimately the

Labour Court by award dated 6.11.1999 directed the petitioner to reinstate the respondent with full backwages.

3. Mr. K.M. Patel for the petitioner submitted that the Labour Court has committed an error while passing the award as the award has been passed in respect of the very same dispute wherein a settlement has been arrived at . In fact Reference No.622/82 was made to the Labour Court in which settlement was reached on 6.5.1983 and award was made in terms of settlement on 9.5.1983. He further submitted that in view of the fact that the respondent after giving his oral evidence and admitting in cross-examination that there was settlement between the parties in the earlier reference, amended his statement, the Labour Court ought not to have entertained the same. He further submitted that in fact there was no termination at all and it was retrenchment.

4. I have perused the relevant record. From the record it transpires that in fact there was retrenchment and and there was settlement and award was made in Reference No.622/82 in terms of the settlement. There is nothing on record to show that it was a termination and not retrenchment. In view of the evidence on record it is clear that there was a settlement. In view of the facts of the case this court also find that there was no proof with regard to termination of the respondent or alleged violation of breach of section Section 25-G or H of the Act.

5. In view of the above the impugned order is required to be quashed and set aside. Accordingly the impugned order is quashed and set aside. However, in view of the earlier settlement and subsequent award, if the respondent reports for duty within a period of one month from the notice issued by the present petitioner, he will be given the benefits of the award passed in Reference No.622/82. In such event, the respondent will not be entitled for back wages and continuity in service and it will be fresh employment. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]
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